

Nos. 14486-14487

---

United States  
Court of Appeals  
for the Ninth Circuit

---

HARRY JONES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

CARRIE A. JONES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

---

Appeals from the United States District Court for the  
Eastern District of Washington,  
Southern Division.

FILED

NOV 15 1954



## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavit of Jones, Carrie .....	13
Affidavit of Jones, Harry .....	6
Affidavit of Schweizer, Herman .....	15
Answer .....	4
Bond on Appeal .....	43
Certificate of the Clerk .....	46
Complaint .....	3
Exhibits, Plaintiff's:	
No. 1—Claim and Amended Return of Harry Jones .....	17
2—Claim and Amended Return of Carrie Jones .....	25
3—Check Dated 1-13-47, Harry G. Jones to Treas. of the United States .....	30
Findings of Fact and Conclusions of Law .....	31
Judgment Re Jones, Carrie .....	35
Judgment Re Jones, Harry .....	34
Minutes of the Clerk April 26, 1954 .....	40

INDEX	PAGE
Motion for Judgment Notwithstanding the Decision of the Court, or in the Alternative for a New Trial Re Jones, Carrie .....	37
Motion for Judgment Notwithstanding the Decision of the Court, or in the Alternative for a New Trial Re Jones, Harry .....	36
Names and Addresses of Attorneys .....	1
Notice of Appeal by Jones, Carrie .....	42
Notice of Appeal by Jones, Harry .....	41
Order Denying Motion for Judgment, Etc., Re Jones, Carrie .....	39
Order Denying Motion for Judgment, Etc., Re Jones, Harry .....	38
Statement of Points Relied Upon on Appeal...	44
Stipulation Re Consolidation of Records .....	49

## NAMES AND ADDRESSES OF ATTORNEYS

JOHN S. MOORE, JR.,  
415 Miller Building,  
Yakima, Washington,

Attorney for Plaintiff-Appellant.

WILLIAM B. BANTZ,  
U. S. Attorney, and  
WILLIAM M. TUGMAN,  
Assistant U. S. Attorney,

Federal Building,  
Spokane, Washington,

Attorneys for Defendant-Appellee.



In the District Court of the United States for the  
Eastern District of Washington, Southern Di-  
vision

No. 835

HARRY JONES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### COMPLAINT

Comes now the plaintiff and for cause of action  
alleges as follows, to wit:

#### 1.

This action arises under Title 28, United States  
Code, Section 1346 (a) (1) and 1402 (a) as here-  
inafter more fully appears.

#### 2.

That the plaintiff, Harry Jones, for the calendar  
year 1946 executed an income tax return and paid  
the income tax due thereunder as said return was  
completed in the amount of \$1,526.54. That said re-  
turn was prepared and mailed to the Collector of  
Internal Revenue at Tacoma, Washington, on Janu-  
ary 13, 1947. That thereafter, on or about January  
15, 1947, plaintiff executed and mailed unto the Col-  
lector of Internal Revenue at Tacoma, Washington,  
an amended return and claim for refund for the  
reason that of said total tax paid the sum of \$1,-  
082.54 was erroneously paid to and collected by

the Collector of Internal Revenue at Tacoma, Washington. That thereafter, on or about the 8th day of October, 1951, plaintiff mailed unto the Collector of Internal Revenue at Tacoma, Washington, an amended claim for refund for the reason that the original claim had been erroneously executed.

## 3.

That more than six months have passed since the filing of the above claims and plaintiff has been advised of no action on said claims.

Wherefore, plaintiff prays for judgment against the defendant in the sum of \$1,082.54, together with interest thereon at the rate of six per cent per annum from January 13, 1947, until paid, together with plaintiff's costs and disbursements herein incurred and for such other and further relief as to the Court may seem proper.

McGREGOR & HALSTEAD,

VELIKANJE & VELIKANJE

/s/ JOHN S. MOORE, JR.,

Attorneys for Plaintiff.

[Endorsed]: Filed July 24, 1953.

---

[Title of District Court and Cause.]

ANSWER

Defendant admits, denies and alleges as follows:

1. Admits paragraph 1 of the complaint but alleges that this Court lacks jurisdiction of this



cause of action because no claim for refund was timely filed pursuant to Section 322(b) of the Internal Revenue Code and as required by Section 3772(a) of the Internal Revenue Code.

2. Denies paragraph 2 of the complaint except admits:

(a) plaintiff. Harry Jones, for the calendar year 1946 executed an income tax return and paid the income tax shown thereon in the amount of \$1,526.54, on or about January 13, 1947, to the Collector of Internal Revenue at Tacoma, Washington.

(b) plaintiff, Harry Jones filed what purported to be a claim for refund on or about October 10, 1951, with the Collector of Internal Revenue at Tacoma, Washington.

3. Denies paragraph 3 of the complaint except admits that more than six months has passed since the filing of what purported to be a claim for refund as referred to in paragraph 2(b) above.

And as Further Defense defendant alleges that this Court lacks jurisdiction of this cause of action because no claim for refund was filed by plaintiff within three years from the time the income tax return was filed or within two years from the time the tax was paid pursuant to Section 322(b) of the Internal Revenue Code. No claim for refund having been filed within the prescribed time limitation as required by Section 3772(a) of the Internal Reve-

nue Code, this action cannot be maintained by any court.

Wherefore, defendant prays that this action be dismissed with costs to go to the defendant.

/s/ WILLIAM B. BANTZ,  
United States Attorney.

[Endorsed]: Filed September 21, 1953.

---

[Title of District Court and Cause.]

### AFFIDAVIT OF HARRY JONES

State of Washington,  
County of Benton—ss.

Harry Jones, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above cause and is and has been at all times since prior to January 1, 1946, the husband of Carrie Jones; that during the year 1947 in the month of January, affiant delivered to one Louis H. Harrison at Prosser, Washington, a statement of affiant's receipts and disbursements during the calendar year ending December 31, 1946, in order that the said Louis H. Harrison could prepare a Federal Income Tax Return for affiant and his wife, Carrie Jones, for said calendar year; that the said Louis H. Harrison was at that time maintaining an office in Prosser, Washington, as a public accountant, and holding himself out to the public as qualified to prepare Federal Income Tax Returns. That on or about the thirteenth day of January, 1947, affiant and his said

wife, Carrie Jones, went to the office of Louis H. Harrison, at Prosser, Washington, and there received from the said Louis H. Harrison, the originals and copies of the Federal Income Tax Returns for the calendar year ending December 31, 1946, which the said Louis H. Harrison had prepared for affiant and his said wife; that said returns consisted of one Form 1040 for affiant, one Form 1040 for affiant's wife, Carrie Jones, and one Form 1040-F for affiant and his wife, showing their schedule of farm income and expenses for said period referred to.

That on said date of January 13, 1947, affiant and his said wife, Carrie Jones, executed the Returns prepared by Louis H. Harrison, and inserted the two 1040 Forms and the one 1040-F Form in an envelope, together with a check drawn by affiant in the amount of \$3,195.58, made payable to the Treasurer of the United States, which envelope was securely sealed and addressed to the Collector of Internal Revenue at Tacoma, Washington. That affiant on said thirteenth day of January, 1947, thereafter mailed said envelope, postage prepaid at the United States Post Office at Prosser, Washington, That of said sum of \$3,195.58 the sum of \$1,526.54 was computed to be income tax for affiant and the sum of \$1,669.04 was computed to be the income tax due from affiant's wife, Carrie Jones; that such income tax as computed on the separate returns, for affiant and his wife, Carrie Jones, was the result of the computation of gross income for affiant and his wife in the sum of \$16,644.96.

That on or about the fifteenth day of January, 1947, affiant at his home near Prosser, Washington, was engaged in examining the carbon copies of the income tax returns executed by the said Louis H. Harrison for affiant and his wife for the calendar year ending December 31, 1946; that in such examination affiant determined that the said Louis H. Harrison had made a mistake in the computation of the gross income for affiant and his said wife; that affiant thereupon visited the said Louis H. Harrison of Prosser, Washington, on or about the fifteenth day of January, 1947, and called to the attention of the said Louis H. Harrison the mistake in the computation of the gross income; that the said Louis H. Harrison thereupon agreed with affiant that a mistake had been made and prepared amended returns for affiant and his wife for said calendar year, by executing an amended 1040 return for affiant and amended 1040-F for affiant and his wife, and an amended 1040 for affiant's wife; that in addition, the said Louis H. Harrison prepared a claim for refund for affiant and a claim for refund for affiant's wife; that following the preparation of these forms by the said Louis H. Harrison, affiant and his wife executed said amended returns and said claims by fixing their signatures thereto and affiant on or about the fifteenth day of January, 1947; placed the originals of the following instruments in an envelope securely sealed and addressed to the Collector of Internal Revenue, at Tacoma, Washington: One form 1040 on behalf of Carrie A. Jones, entitled an Amended Return, one form 1040 for

Harry Jones, entitled an Amended Return, and one form 1040-F, for Harry Jones and Carrie A. Jones, entitled an Amended Return, one claim for refund for the refunding of excess income tax paid for Harry Jones, one claim for refund for excess tax paid for Carrie A. Jones; that affiant mailed said envelope in which said instruments were placed at the United States Post Office at Prosser, Washington, postage prepaid. That on or about the first day of January, 1951, affiant was discussing his overpayment of the tax with an employee of the Internal Revenue Service, at the Office of the Internal Revenue Service at Yakima, Washington; that when affiant advised said employee that he had heard nothing upon his claim for refund and had not received any money back, said employee advised affiant that he should take some definite action; that affiant thereafter hired counsel to assist him in the matter and on or about the thirteenth day of September, 1951, affiant signed an amended claim for refund prepared by his counsel of record in this matter, which claim for refund was filed in the Office of the Collector of Internal Revenue at Tacoma, Washington, on or about the eighth day of October, 1951; that there are attached hereto and made a part hereof by reference, the following items relating to this Affidavit:

1. Cancelled check executed by Harry G. Jones, dated January 13, 1947, in the amount of \$3,195.58, payable to the order of Treasurer of the United States, which check is the original check issued by



affiant for the payment of the total federal income tax due for the calendar year ending December 31, 1946, under the computations in the original income tax returns prepared by Louis H. Harrison, and mailed on or about January 13, 1947.

2. Cancelled check dated January 13, 1947, issued by Harry G. Jones in the sum of \$25.00 payable to Louis H. Harrison, which check is the check used in payment to Louis H. Harrison by affiant for the preparation of the federal income tax returns for affiant and his wife, for the calendar year ending December 31, 1946.

3. True and correct photostatic copy of Form 1040-F amended return, schedule of farm income and expenses, pages 1 and 3 for Harry and Carrie A. Jones, Prosser, Washington, being the true and correct copy of those portions of Form 1040-F prepared by Louis H. Harrison on or about January 15, 1947, for affiant and affiant's wife, for the calendar year ending December 31, 1946, and mailed by affiant to the Collector of Internal Revenue on or about January 15, 1947.

4. Form 1040, amended individual income tax return for 1946 for Carrie A. Jones, being a true and correct photostatic reproduction of that portion of such form 1040 prepared by Louis H. Harrison for affiant and his wife, Carrie A. Jones, for the calendar year ending December 31, 1946, and mailed by affiant on or about January 15, 1947, to the Collector of Internal Revenue at Tacoma, Washington.

5. True and correct photostatic copy of that portion of Form 1040, amended individual income tax return for Harry Jones, as prepared by Louis H. Harrison, signed by affiant and mailed by affiant to the Collector of Internal Revenue at Tacoma, Washington, on or about January 15, 1947.

6. A true and correct photostatic copy of Form 843, claim for refund as prepared by Louis H. Harrison and signed by affiant, being the claim for refund for federal income tax paid for the calendar year ending December 31, 1946, being the photostatic copy of a claim mailed by affiant to the Collector of Internal Revenue at Tacoma, Washington, on or about January 15, 1947.

7. True and correct photostatic copy of Form 843, claim for refund, prepared by Louis H. Harrison and signed by Carrie A. Jones, for a claim for refund of taxes paid for the calendar year ending December 31, 1946, the original of which was mailed by affiant on or about January 15, 1947, to the Collector of Internal Revenue at Tacoma, Washington.

8. True and correct carbon copy of Form 843, Amended claim, prepared by affiant's counsel, and signed by affiant on September 13, 1951, and filed with the Collector of Internal Revenue at Tacoma, Washington, on or about the eighth day of October, 1951.

9. True and correct carbon copy of Form 843, Amended Claim, prepared by affiant's counsel for

the said Harry Jones and affiant and mailed in the United States Post Office at Prosser, Washington. as set forth in the Affidavit of Harry Jones for the reason that affiant was present at the time said Harry Jones affixed his signature to said instruments and mailed the same at the said Post Office; that affiant also knows that the instruments attached to said Affidavit of Harry Jones are the instruments as identified by him in his Affidavit, and that all other facts set forth in the Affidavit of the said Harry Jones are true and correct to the best information and belief of affiant.

/s/ CARRIE A. JONES.

Subscribed and sworn to before me this 23rd day of January, 1954.

[Seal]      /s/ DWIGHT A. HALSTEAD,  
Notary Public in and for the State of Washington,  
Residing at Prosser.

[Endorsed]: Filed March 9, 1954.



U. S. Treasury Department  
Office of the Director of Internal Revenue  
Washington Building  
Tacoma 2, Wash.

AFFIDAVIT

To Whom It May Concern:

This affidavit pertains to the 1946 accounts of Harry G. Jones and Carrie A. Jones of Prosser, Washington. The following facts are presented as revealed by the records of the Seattle District Director's office in the Collection Division located at Tacoma, Washington:

1. The records of the Collection Division indicate that the 1946 returns of Harry G. Jones and Carrie A. Jones were received with a payment of income tax on January 14, 1947.

2. A search has been made of all pertinent files and there is no record of having received Claims or amended returns prior to the expiration date of the Statute of Limitation, which for the calendar year 1946, is March 15, 1950.

3. There is a record of Claims having been filed for 1946 by Harry G. Jones and also by Carrie A. Jones on October 10, 1951, and November 18, 1952, respectively. This fact is evidenced by a Record of Claims (Form 815).

I hereby certify the above to be a true and correct statement of the facts as evidenced by the orig-

inal books of entry and records available in the Collection Division of the Seattle District Director's office.

/s/ HERMAN SCHWEIZER,  
Chief, Accounting Branch.

State of Washington,  
County of Pierce—ss.

I, Marceil L. Hay, Notary Public, in and for the State of Washington, do hereby certify that on this 6th day of November, 1953, personally appeared before me Herman Schweizer, to me known to be the individual described in and who executed the foregoing statement and acknowledged that he signed the same as his free and voluntary act and for the purposes therein mentioned.

Given under my hand and official seal this 6th day of November, 1953.

[Seal]      /s/ MARCEIL L. HAY,  
Notary Public in and for the State of Washington,  
Residing at Tacoma.

[Endorsed]: Filed April 7, 1954.

## PLAINTIFF'S EXHIBIT NO. 1

## CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☒ REFUND OF TAX ILLEGALLY COLLECTED.
- ☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
- ☐ ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

COLLECTOR'S STAMP

(Place stamp)

STATE OF Washington

COUNTY OF Benton

cc:

Name of taxpayer or purchaser of stamps FRANK JONES

Business address

Prosser,

Washington

Residence

Prosser

Washington

TYPE  
OR  
PRINT

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Tacoma, Washington
2. Period (if for income tax, make separate forms for each taxable year) from Jan. 1, 1946 to Dec. 31, 1946
3. Character of assessment or tax Income Tax
4. Amount of assessment, \$ 1526.54; dates of payment Jan. 15, 1947
5. Date stamps were purchased from the Government
6. Amount to be refunded \$ 444.00
7. Amount to be abated (not applicable to income or estate taxes) \$
8. The time within which this claim may be legally filed expires, under Section 322 I.R.C. Jan. 15, 1950

The deponent verily believes that this claim should be allowed for the following reasons:

The gross income as shown on the original return was erroneous. Such gross income for both the taxpayer and wife, Carrie A. Jones, should have been 7,370.36, instead of \$16,644.96, as shown. This results in a gross income for taxpayer of \$3685.18, and a corresponding reduction in tax. Amended returns are attached hereto to support the above allegations.

Pltf. Exhibit 1 For Identification

Admitted

Case No.

835

(Attach letter when claim is made to the collector)

Sworn to and subscribed before me this

Signed

day of

19

Signature of Plaintiff or his agent

Title

(SEE INSTRUCTIONS ON REVERSE SIDE)

16-10000









AMERICAN HISTORY

FORM 1040 F

**Treasury Department**  
**Internal Revenue Service**

Page 12

# UNITED STATES SCHEDULE OF FARM INCOME AND EXPENSES

For Calendar Year 194...

**Attach This Form  
to Your Income  
Tax Return Form  
1040 and File It  
With the Collector  
of Internal Revenue  
for Your District**

On for year beginning ..... 194 , and ending ..... 194 .

HARRY AND CARLIE A. JONES

Name THOMAS, WASHINGTON

Location of farm or farms

Number of acres in each form

**Fill in Pages 1 and 3  
of Your Accounts Are  
Kept on a Cash Basis.**

**If You Keep Books  
on an Accrual Basis  
and Desire to Use  
This Form, Fill in  
Pages 2 and 3 Instead**

## FARM INCOME FOR TAXABLE PERIOD COMPUTED ON A CASH RECEIPTS AND DISBURSEMENTS BASIS

1. SALE OF LIVESTOCK RAISED			2. SALE OF PRODUCTS RAISED			3. OTHER FARM INCOME		
Kind	Quantity	Amount	Kind	Quantity	Amount	Item	Amount	
Cattle		52	Grain		2516	Milk rec'd for produce		
Horses			Hay			Machine work		
Mules			Cotton			Hire of teams		
Swine			Tobacco			Breeding fees		
Poultry			Potatoes			Rent rec'd in crop shares		
			Sugar beets			Work off farm		
			Vegetables			Wood and lumber		
			Fruits			Other forest products		
			Nuts			Agricultural program payments	407	
			Dairy products			Other (specify):		
			Eggs					
			Meat products					
			Poultry, dressed					
			Wool and mohair					
			Honey					
			Sirup and sugar					
			Other (specify):					
Total			Total			Total		
(Enter on line 1 of summary below)			(Enter on line 2 of summary below)			(Enter on line 3 of summary below)		

#### A SALE OF LIVESTOCK AND OTHER ITEMS PURCHASED

[illegible]

## SUMMARY OF INCOME AND DEDUCTIONS COMPUTED ON A CASH RECEIPTS AND DISBURSEMENTS BASIS

1 Sale of livestock raised	928 00	6. Expenses (from page 3)	28320 79
2 Sale of live born	23108 24	7 Depreciation (from page 3)	000 00
3 Other farm use	207 24	8. Net operating loss deduction (attach statement)	
4 Total sale of livestock and other farm use	657 00	9 TOTAL DEDUCTIONS	28320 79
5 Total	26790 54		9274 60





## FARM EXPENSES FOR TAXABLE YEAR (See Instructions)

1991

[illegible]

12596-39

**APPRECIATION (See Introduction)**[illegible]



Form 843

Treasury Department  
Internal Revenue Service  
(Revised Feb. 1949)

AMENDED CLAIM

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp. (Date received): [Blank]

State of Washington,  
County of Benton—ss.

Name of taxpayer or purchaser of stamps: Harry Jones.

Business address: Prosser, Washington.

Residence: Prosser, Washington.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Tacoma, Washington.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from: 1-1-46, to 12-1-46.
3. Character of assessment or tax: Income Tax.
4. Amount of assessment, \$1526.54; dates of payment Jan. 15, 1947.
5. Date stamps were purchased from the Government.
6. Amount to be refunded: \$1082.54.
7. Amount to be abated (not applicable to income, gift, or estate taxes).
8. The time within which this claim may be legally filed expires, under section 322 of Internal Rev. Code on Jan. 15, 1950. Except: this is an amendment to prior claim.

The deponent verily believes that this claim should be allowed for the following reasons:

Gross income as shown on original return was erroneous. Original return showed gross income for taxpayer and wife, Carrie A. Jones, as \$16,644.96; gross income should have been \$7,370.36. Under original return taxpayer paid \$1,526.54 as tax on one-half erroneous gross. Amended return previously filed, together with an original claim, corrected taxpayer's one-half

of community income to \$3,685.18, with a corrected tax of \$444.00.

/s/ HARRY G. JONES.

Subscribed and sworn to before me this 13th day of September, 1951.

[Seal]     /s/ DWIGHT A. HALSTEAD,  
Notary Public for Washing-  
ton, Residing at Prosser.

U. S. Treasury Department  
Office of the Director of Internal Revenue  
Washington Building  
Tacoma 2, Wash.

July 9, 1953.

In Replying Refer to:

C:A:A  
MST:aw  
3002675-48

Mr. Harry Jones,  
Prosser,  
Washington.

Dear Mr. Jones:

Reference is made to your claim for refund, Form 843, in the amount of \$1,082.54, covering 1947 income tax, received in this office on October 10, 1951.

Since the records of this office do not disclose receipt of a prior 1947 claim or amended return to extend the statutory period, no further action can be taken on the claim received on October 10, 1951.

Very truly yours,

WILLIAM E. FRANK,  
District Director.

By /s/ M. E. CHRISTIN,  
Assistant Chief, Claims  
Section.

## PLAINTIFF'S EXHIBIT NO. 2

Form 625  
TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
(Revised April 1966)

## CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☒ REFUND OF TAX ILLEGALLY COLLECTED.  
☐ REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.  
☐ ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

State of Washington

County of Benton

COLLECTOR'S STAMP

(Date received)

TITLE  
OR  
PRINT

Name of taxpayer or purchaser of stamps Garry A. JonesBusiness address \_\_\_\_\_  
(Street)Proseer Washington  
(City)Residence \_\_\_\_\_ Proseer Washington  
(City)

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

District in which return (if any) was filed Tacoma, WashingtonPeriod (if for income tax, make separate form for each taxable year) from Jan. 1, 1946 to Dec. 31, 1946Character of assessment or tax Income TaxAmount of assessment, \$ 1669.04; dates of payment Jan. 15, 1947

Date stamps were purchased from the Government \_\_\_\_\_

Amount to be refunded \$ 1,225.04

Amount to be abated (not applicable to income or estate taxes) \_\_\_\_\_

The time within which this claim may be legally filed expires, under Section \_\_\_\_\_

on Jan. 15, 1950

The deponent verily believes that this claim should be allowed for the following reasons:

In the preparation of the Income Tax Return for taxpayer above, there was included in gross income the amount of \$9,274.60 in total, for taxpayer and husband, which amount was erroneous. Total gross income for taxpayer and husband, Harry Jones, should be 7,370.26, instead of the original figure of \$16,644.96, as shown on original returns. The amended returns attached display the calculations of the refund requested.

Pltf. Exhibit 2 for Identification

Admitted

Case No. 835

(Amount before-tax credits if apportioned to non-qualified)

Sworn to and subscribed before me this \_\_\_\_\_

Signed \_\_\_\_\_

Date of \_\_\_\_\_

19 \_\_\_\_\_

Signature of Officer Subscribing \_\_\_\_\_

(Title)

SEE INSTRUCTIONS ON REVERSE SIDE.

16-44804





**APPENDED RETURN**

Send to the Director of Internal Revenue on or before March 15, 1947. Any balance of tax due must be paid in full with return. See separate instructions for filing out return.

Page 1

**U. S. INDIVIDUAL INCOME TAX RETURN  
FOR CALENDAR YEAR 1946**

**1946**

For the calendar year 1946, and ending 1947

(EXPLANATION.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than \$1,500, consisting wholly of wages shown on W-2 showing no other income, and not more than \$100 of other wages, dividends, and interest.

**CARL E. A. JONES**

(PRINT NAME.—If this return is for a husband and wife, use both first names)

IF PRINTED PRINT Name and number of social security

**PROSEMER**

**DENTON**

**WASHINGTON**

(Address)

(State)

Social Security No.

Do not write in these spaces

For  
Credit  
Social  
No.

Signature  
(Cashier's Stamp)

1. If you are a husband and wife, enter the name of the husband on this line. If this is a joint return of husband and wife, but dependent relative of both, list names of other close relatives (as defined in instruction 1) with 1946 income of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, but dependent relative of both, list names of other close relatives (as defined in instruction 1) with 1946 income of less than \$500 who received more than one-half of their support from you.

Name (print or print)	Occupation	Where (print or print)	Relationship
<b>Carrie A. Jones</b>			

2. List all other income, including commissions and other compensation, interest, dividends, and other income, and enter the total here. If you have received any income from a trust, estate, or other source, list the name of the source and the amount received from it. If you have received any income from a trust, estate, or other source, list the name of the source and the amount received from it.

What (print or print)	Amount
<b>See husband's return for details of community income</b>	

3. Enter the total amount of your dividends. Enter total here → \$  
4. Enter the total amount of your interest (excluding interest from Government obligations). Enter total here → \$  
5. If you have received any other income, give details on page 2 and enter the total here. Enter total here → \$  
6. If you have received any other income, give details on page 2 and enter the total here. Enter total here → \$

IF YOUR INCOME WAS LESS THAN \$500.—You may find your tax in the table on page 4. This table, which is provided by law, automatically shows you the percent of your total income for charitable contributions, interest, taxes, royalties, dividends, and other income, and miscellaneous expenses. If your total income is less than \$500, you may find your tax in the table on page 4. If your total income is more than \$500, you may find your tax in the table on page 4. If your total income is more than \$500, you may find your tax in the table on page 4.

7. Enter your tax in the table on page 4, or from line 12, page 3. Enter total here → \$	
8. How much have you paid on your 1946 income tax? (A) If you have paid any tax, enter the amount. (B) If you have not paid any tax, enter "None". Enter total here → \$	
9. Enter the amount of your payments (from 8), enter BALANCE OF TAX DUE here. Enter total here → \$	
10. Enter the amount of your payments (from 8), enter OVERPAYMENT here. Enter total here → \$	

11. If you have paid any tax, enter the amount. If you have not paid any tax, enter "None". Enter total here → \$

12. If you have paid any tax, enter the amount. If you have not paid any tax, enter "None". Enter total here → \$

13. If you have paid any tax, enter the amount. If you have not paid any tax, enter "None". Enter total here → \$

14. If you have paid any tax, enter the amount. If you have not paid any tax, enter "None". Enter total here → \$

**APPENDED RETURN**



Form 843

Treasury Department

Internal Revenue Service

(Revised Feb. 1949)

AMENDED CLAIM

To Be Filed With the Collector Where Assessment  
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- ☒ Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).

Collector's Stamp. (Date received): [Blank]

State of Washington,  
County of Benton—ss.

Name of taxpayer or purchaser of stamps: Carrie A. Jones.

Business address: Prosser, Washington.

Residence: Prosser, Washington.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Tacoma, Washington.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1946, to Dec. 1, 1946.

3. Character of assessment or tax: income tax.

4. Amount of assessment, \$1,669.04; dates of payment January 15, 1947.

5. Date stamps were purchased from the Government.

6. Amount to be refunded: \$1,120.04.

7. Amount to be abated (not applicable to income, gift, or estate taxes).

8. The time within which this claim may be legally filed expires, under section 322 of Internal Revenue Code on January 15, 1950, except this is an amendment to prior claim.

The deponent verily believes that this claim should be allowed for the following reasons:

Gross income as shown on original return was erroneous. Original return showed gross income for taxpayer and husband, Harry Jones, as \$16,644.96. Gross income should have been \$7,370.36. Under original return, taxpayer paid \$1,669.04 as tax on one-half erroneous gross. Amended return previously filed together with an original claim corrected taxpayer's one-half

of community interest to \$3,685.18, with a corrected tax of \$549.00.

/s/ CARRIE A. JONES.

Subscribed and sworn to before me this 12th day of November, 1952.

[Seal] /s/ DWIGHT A. HALSTEAD,  
Notary Public for Washington,  
Residing at Prosser.

U. S. Treasury Department  
Office of the Director of Internal Revenue  
Washington Building  
Tacoma 2, Wash.

July 9, 1953.

In Replying Refer to:

C:A:A

MST:aw

3002674-48

Mrs. Carrie Jones,  
Prosser,  
Washington.

Dear Mrs. Jones:

Reference is made to your claim for refund, Form 843, in the amount of \$1,120.04, covering 1947 income tax, received in this office on November 18, 1952.

Since the records of this office do not disclose receipt of a prior 1947 claim or amended return to ex-

tend the statutory period, no further action can be taken on the claim received on November 18, 1952.

Very truly yours,

WILLIAM E. FRANK,  
District Director;

By /s/ M. E. CHRISTIN,  
Assistant Chief, Claims  
Section.

---

Plaintiff's Exhibit No. 3

No. 835

[Check—Front]

7            Prosser, Washington Jan. 13, 1947    No. 13

Prosser Branch

The Old National Bank 98-138/12  
of Spokane

Pay to the

Order of Treasurer of United States    \$3,195.58

Three Thousand-Ninety-five & 58/100 Dollars

/s/ HARRY G. JONES

1526.54

1669.04

[Back]

[Department of Internal Revenue Stamp Dated  
Jan. 24, 1947.]

[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on regularly for trial before the above-entitled Court on April 26, 1954, the plaintiff appearing by his attorney, John S. Moore, Jr., and the defendant United States of America appearing by William M. Tugman, Assistant United States Attorney for the Eastern District of Washington, and the court having heard the testimony and argument of counsel, and being fully advised in the premises, makes the following:

### Findings of Fact

#### I.

That the plaintiff filed income tax returns for the calendar year ending December 31, 1946, and that said returns were prepared by Louis H. Harrison, an accountant.

#### II.

That plaintiff and his wife executed the returns prepared by Louis H. Harrison and inserted them in an envelope, together with a check drawn by the plaintiff in the amount of \$3,195.58 made payable to the Treasurer of the United States, and addressed and mailed, with postage prepaid, said returns to the Collector of Internal Revenue, Tacoma, Washington, on the 13th day of January, 1947.

#### III.

That on or about the 15th day of January, 1947, the plaintiff concluded from a re-examination of



the returns for plaintiff and his wife for the calendar year ending December 31, 1946, that a mistake had been made by the accountant, Louis H. Harrison, in computing the gross income for plaintiff and his wife.

#### IV.

That pursuant to plaintiff's discovery of the mistake on said returns the plaintiff caused accountant Louis H. Harrison to prepare amended returns and a claim for refund for plaintiff and his wife.

#### V.

That the originals of the amended returns and claim for refund were placed in an envelope addressed and mailed to the Collector of Internal Revenue, Tacoma, Washington, with postage prepaid, on or about the 15th day of January, 1947.

#### VI.

That the Collector of Internal Revenue has no record of receiving any of the documents mailed on or about the 15th day of January, 1947, and that a search of all pertinent files in the Collector's Office disclosed no record of having received said amended returns or claim for refund for the year 1946.

From the foregoing Findings of Fact the Court makes the following:

### Conclusions of Law

#### I.

That the plaintiff has failed to sustain the burden of proof that amended returns and claim for refund were filed within the three-year statute of



limitations; that the provisions of Title 26, U.S.C.A., Section 3772(a), provide that no suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected until a claim for refund has been timely filed with the Commissioner of Internal Revenue, pursuant to Section 322(b) (1) of the Internal Revenue Code.

## II.

That the mere mailing of an amended return or claim for refund is, under the provisions of Sections 3772(a) and 322(b) (1) of the Internal Revenue Code, insufficient, and that it is necessary that such papers be filed with the Collector of Internal Revenue and that filing is not complete until the document is delivered and received by the proper official and filed by him.

## III.

That the necessity of filing is jurisdictional and that compliance with the provisions of the law relating to filing is necessary to the institution of this action.

Dated this 9th day of June, 1954.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Presented by:

/s/ WILLIAM M. TUGMAN,  
Assistant U. S. Attorney.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 10, 1954.

United States District Court for the Eastern  
District of Washington, Southern Division

No. 835

HARRY JONES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT

This matter having come on for trial before the above-entitled Court sitting without a jury on the 26th day of April, 1954, and the Court having rendered judgment for the defendant, it is hereby

Ordered, Adjudged and Decreed that the plaintiff take nothing and that this action be dismissed with prejudice on its merits, with each party to bear its own costs herein.

Dated this 9th day of June, 1954.

/s/ WILLIAM J. LINDBERG,

United States District Judge.

Presented by:

/s/ WILLIAM M. TUGMAN,

Assistant U. S. Attorney.

Service of Copy acknowledged.

[Endorsed]: Filed June 10, 1954.

United States District Court for the Eastern  
District of Washington, Southern Division

No. 836

CARRIE A. JONES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This matter having come on for trial before the above-entitled Court sitting without a jury on the 26th day of April, 1954, and the Court having rendered judgment for the defendant, it is hereby

Ordered, Adjudged and Decreed that the plaintiff take nothing and that this action be dismissed with prejudice on its merits, with each party to bear its own costs herein.

Dated this 9th day of June, 1954.

/s/ WILLIAM J. LINDBERG,

United States District Judge.

Presented by:

/s/ WILLIAM M. TUGMAN,

Assistant U. S. Attorney.

Service of Copy acknowledged.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT NOTWITHSTANDING THE DECISION OF THE COURT, OR IN THE ALTERNATIVE FOR A NEW TRIAL

Comes now the plaintiff, Harry Jones, and respectfully moves the Court for judgment notwithstanding the decision of the Court, or in the alternative for a new trial, on the following grounds:

1. Irregularity in the proceedings of the Court, by which the plaintiff was prevented from having a fair trial.

2. Accident or surprise which ordinary prudence could not have guarded against.

3. Newly discovered evidence material for plaintiff which they could not, with reasonable diligence, have discovered and produced at the trial.

4. Excessive damages appearing to have been given to defendant, under the influence of passion or prejudice.

5. Insufficiency of the evidence to justify the Court's decision, and that such decision is against the law.

6. Error in law occurring at the trial and excepted to at the time by plaintiff.

VELIKANJE, VELIKANJE &  
MOORE,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT NOTWITHSTANDING  
DECISION OF THE COURT, OR IN  
THE ALTERNATIVE FOR A NEW TRIAL

Comes now the plaintiff, Carrie A. Jones, and respectfully moves the Court for judgment notwithstanding the decision of the Court, or in the alternative for a new trial, on the following grounds:

1. Irregularity in the proceedings of the Court, by which the plaintiff was prevented from having a fair trial.
2. Accident or surprise which ordinary prudence would not have guarded against.
3. Newly discovered evidence material for plaintiff which she could not, with reasonable diligence, have discovered and produced at the trial.
4. Excessive damages appearing to have been given to defendant under the influence of passion or prejudice.
5. Insufficiency of the evidence to justify the Court's decision, and that such decision is against the law.
6. Error in law occurring at the trial and excepted to at the time by plaintiff.

VELIKANJE, VELIKANJE &  
MOORE,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

No. 835

ORDER

This cause came on to be heard on July 17, 1954, on the motion by the plaintiff herein for judgment notwithstanding the decision of the Court, or in the alternative for a new trial, and it appearing to the Court that said motion should be denied, it is

Ordered that the plaintiff's motion for judgment notwithstanding the decision of the Court and for judgment in accordance with the motion of the plaintiff be denied, and, it is

. Further Ordered that the motion for new trial be denied.

Dated this 19th day of July, 1954.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Presented by:

/s/ WILLIAM M. TUGMAN,  
Assistant U. S. Attorney.

[Endorsed]: Filed July 19, 1954.

[Title of District Court and Cause.]

No. 836

ORDER

This cause came on to be heard on July 17, 1954, on the motion by the plaintiff herein for judgment notwithstanding the decision of the Court, or in the alternative for a new trial, and it appearing to the Court that said motion should be denied, it is

Ordered that the plaintiff's motion for judgment notwithstanding the decision of the Court and for judgment in accordance with the motion of the plaintiff be denied, and, it is

Further Ordered that the motion for new trial be denied.

Dated this 19th day of July, 1954.

/s/ WILLIAM J. LINDBERG,  
United States District Judge.

Presented by:

/s/ WILLIAM M. TUGMAN,  
Assistant U. S. Attorney.

[Endorsed]: Filed July 19, 1954.



[Title of District Court and Cause.]

### COURT TRIAL

Case called for trial by the Court, Mr. John S. Moore, Jr., and Mr. Dwight Halstead appearing for Plaintiff and Mr. William M. Tugman, Assistant United States Attorney, appearing for Defendant.

The following stipulations were orally agreed to by all parties:

1. Case No. 836, Carrie Jones vs. USA, to rest on decision in this case.
2. Contents of the affidavits are to be considered the same as if the affiants were present to testify.

The following exhibits were received in evidence:

Pltf's Exh. 1.—Claim and amended return of Harry Jones.

Pltf's Exh. 2.—Claim and amended return of Carrie A. Jones.

Pltf's Exh. 3.—Check dated 1/13/47, Harry G. Jones to Treas. of the United States.

After argument of counsel, the Court found for the defendant and dismissed the complaint. Findings and Judgment to be presented.



[Title of District Court and Cause.]

No. 835

NOTICE OF APPEAL

Notice Is Hereby Given that the plaintiff, Harry Jones, by his attorneys of record, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from that final judgment entered in the above-entitled Court on the 10th day of June, 1954, and that certain order denying plaintiff's Motion for Judgment Notwithstanding the Decision of the Court, and Motion for New Trial entered in the above-entitled Court on the 19th day of July, 1954, and all other orders of the Court entered in the above-entitled action.

Dated this 4th day of August, 1954.

/s/ DWIGHT A. HALSTEAD,

/s/ JOHN S. MOORE,

Attorneys for Plaintiff.

[Endorsed]: Filed August 4, 1954.

[Title of District Court and Cause.]

No. 836

### NOTICE OF APPEAL

Notice is Hereby Given that the plaintiff, Carrie Jones, by her attorneys of record, does hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from that final judgment entered in the above-entitled Court on the 10th day of June, 1954, and that certain order denying plaintiff's Motion for Judgment Notwithstanding the Decision of the Court, and Motion for New Trial entered in the above-entitled Court on the 19th day of July, 1954, and all other orders of the Court entered in the above-entitled action.

Dated this 4th day of August, 1954.

/s/ DWIGHT A. HALSTEAD,

/s/ JOHN S. MOORE,

Attorneys for Plaintiff.

Affidavit of Mailing attached.

[Endorsed]: Filed August 5, 1954.

[Title of District Court and Cause.]

No. 835

### BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That we, Harry Jones and Carrie Jones, husband and wife, the Plaintiffs above named, as Principal, and the United Pacific Insurance Company, a corporation organized under the laws of the State of Washington, and authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto United States of America, in the just and full sum of Two Hundred Fifty and no/100 Dollars (\$250.00), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 4th day of August, 1954.

The Condition of This Obligation is Such, That,

Whereas, the above-named United States of America on the 10th day of June, A.D. 1954, in the above-entitled action and Court, recovered judgment against the plaintiffs' Harry Jones and Carrie Jones, husband and wife, above named for dismissal of said plaintiff's action against said defendant.

And Whereas, the above-named Principals have heretofore given due and proper notice that he appeal from said decision and judgment of said Court to the United States Court of Appeals, Ninth Circuit.

Now, Therefore, If the said Principal Harry Jones and Carrie Jones, husband and wife, shall pay all costs and damages that may be awarded against them or either of them on the appeal, or on the dismissal thereof, not exceeding the sum of Two Hundred Fifty and no/100 Dollars (\$250.00), then this obligation to be void; otherwise to remain in full force and effect.

/s/ HARRY JONES,

/s/ CARRIE JONES.

UNITED STATES INSUR-  
ANCE COMPANY,

[Seal] By /s/ GEORGE M. LEMON,  
Attorney-in-Fact,  
and Resident Agent.

[Endorsed]. Filed August 4, 1954.

---

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED UPON  
ON APPEAL

The Appellant states that in his appeal to the United States Court of Appeals for the Ninth Circuit, from the judgment entered in the above-entitled case on June 10, 1954, and the Order Denying plaintiff appellant's Motion for Judgment Notwithstanding the Decision of the Court or in the Alternative for a New Trial, entered in the above-entitled Court on July 19, 1954, pursuant to the provisions

of rule 75(d) of the Rules of Civil Procedure, plaintiff appellant intends to rely on the following points:

1. The trial court erred in finding and concluding that plaintiff appellant had failed to sustain the burden of proof that amended return and claim for refund were filed.

The trial court erred in failing to find that the amended return and claim for refund were filed within the three-year statute of limitations in the office of the Collector of Internal Revenue, Tacoma, Washington.

2. The conclusion of law No. 1 is not supported by the evidence nor by the Findings of Fact, and is contrary to law.

3. The trial court erred in failing to find or conclude that the affirmative evidence of proper mailing of the amended return and claim for refund, constituted proof of filing.

4. The trial court erred in granting judgment for defendant.

The trial court erred in failing to grant judgment for the plaintiff.

Dated this 9th day of August, 1954.

/s/ DWIGHT A. HALSTEAD,

/s/ JOHN S. MOORE,

Attorneys for Plaintiff Appellant.

[Endorsed]: Filed August 9, 1954.

[Title of District Court and Cause.]

### CERTIFICATE OF THE CLERK

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals filed in the above cause, called for in Appellant's Designation filed on August 9, 1954.

Date of Filing and Title of Document:

- 7-24-53 Complaint.
- 9-21-53 Answer.
- 3- 9-54 Affidavit of Harry Jones.
- 3- 9-54 Affidavit of Carrie Jones.
- 4- 7-54 Affidavit of Herman Schweizer.
- 4-26-54 Plaintiff's Exhibit No. 1.
- 4-26-54 Plaintiff's Exhibit No. 2.
- 4-26-54 Plaintiff's Exhibit No. 3.
- 6-10-54 Findings of Fact, Conclusions of Law.
- 6-10-54 Judgment.
- 6-10-54 Motion for Judgment notwithstanding the decision of the Court, or in the alternative for a new trial.
- 7-19-54 Order denying motion.
- 7-19-54 Clerk's minutes of Court Trial.
- 8- 4-54 Notice of Appeal.
- 8- 4-54 Bond for Costs on Appeal.
- 8- 9-54 Statement of Points Relied Upon on Appeal.

8- 9-54 Designation of Portion of Record to  
Constitute Record on Appeal.

In Witness Whereof, I have hereunto set my  
hand and affixed the seal of said District Court at  
Yakima in said district this 17th day of August, 1954.

[Seal]                      STANLEY D. TAYLOR,  
Clerk.

By /s/ THOMAS GRANGER,  
Deputy.

---

[Endorsed]: No. 14486. United States Court of  
Appeals for the Ninth Circuit. Harry Jones, Ap-  
pellant, vs. United States of America, Appellee.  
Transcript of Record. Appeal from the United  
States District Court for the Eastern District of  
Washington, Southern Division.

Filed August 20, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



[Endorsed]: No. 14487. United States Court of Appeals for the Ninth Circuit, Carrie A. Jones, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed August 20, 1954,

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals,  
Ninth Circuit

No. 14487

CARRIE JONES,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

### STIPULATION

It is Hereby Stipulated by and between Dwight A. Halstead and John S. Moore, attorneys for appellant, and William B. Bantz, United States Attorney for the Eastern District of Washington, and William M. Tugman, Asistant United States Attorney for said District, attorneys for the appellee, United States of America, that this case be consolidated and docketed with the case of Harry Jones vs. United States of America, No. 835, and the said cause be heard on appeal upon a consolidated transcript of the record, and judgment in this case to be governed by the judgment in the case of Harry Jones vs. United States of America, No. 835. Only one bond in the sum of \$250.00 shall be required in the appeal of this matter, pursuant to the terms of Rule 73(c), said bond to be posted by Harry Jones and Carrie Jones, jointly.

Dated this 6th day of August, 1954.

/s/ WILLIAM B. BANTZ,  
United States Attorney;

/s/ WILLIAM M. TUGMAN,  
 Assistant United States Attorney, Attorneys for  
 Appellee, United States of America.

/s/ DWIGHT A. HALSTEAD,

/s/ JOHN S. MOORE,

Attorneys for Appellant,  
 Harry Jones.

[Endorsed]: Filed August 20, 1954.